

7/24/2009 Townley, Jay

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3  
4 -----  
5 LEMON CYCLING, INC,

6 Plaintiff,

7  
8 vs. File No. 08-1010 (RHK-JSM)

9  
10 TREK BICYCLE CORPORATION,

11 Defendant.  
12 -----

13  
14 The Videotaped Deposition of  
15 JAY TOWNLEY, taken pursuant to Notice of  
16 Taking Deposition, taken before Kelly L.  
17 Hemsath, RPR, Iowa CSR, a Notary Public in  
18 and for the County of Hennepin, State of  
19 Minnesota, taken on the 24th day of July,  
20 2009, at 800 LaSalle Avenue, Minneapolis,  
21 Minnesota, commencing at approximately  
22 9:08 a.m.  
23  
24  
25

EXHIBIT  
B

7/24/2009 Townley, Jay

APPEARANCES:

DENISE RAHNE and JENNIFER ROBBINS,  
ESQUIRES, of the Law Firm ROBINS, KAPLAN,  
MILLER & CIRESI, LLP, 2800 LaSalle Plaza,  
800 LaSalle Avenue, Minneapolis, Minnesota  
55402, appeared for and on behalf of the  
Plaintiff.

RALPH A. WEBER and CHRIS DOMBROWICKI,  
ESQUIRES, of the Law Firm GASS, WEBER,  
MULLINS, LLC, 309 North Water Street,  
Milwaukee, Wisconsin 53202, appeared for and  
on behalf of the Defendant.

ALSO PRESENT:

Dean Hibben, Videographer

\*The Original is in the possession of  
Attorney Ralph Weber.\*

INDEX:

Page	
Examination by Mr. Weber . . . . .	5
Examination by Ms. Rahne . . . . .	296

7/24/2009 Townley, Jay

1 dealer agreements, which have different  
2 requirements of the retailer.  
3 They will look at the relationship  
4 they've got with that company that would  
5 guarantee they get the goods, because we  
6 tend to be an industry of too little or too  
7 much.

8 So it's both, can I -- as a  
9 retailer, am I going to get fair treatment  
10 and can I live with this brand, am I going  
11 to get the supply, if I give the commitments  
12 that they want from me, and can I negotiate  
13 the mix with the brands that will give me  
14 the yield we anticipate out of our  
15 marketplace?

16 So a lot of it has to do strictly  
17 negotiating with the brands, but all of them  
18 are under authorized dealer agreements. If  
19 I've got six brands, I got six agreements.  
20 Those agreements are similar in the core,  
21 but different in the detail.

22 And the detail gets to the demand  
23 that a brand can place on a retailer for  
24 product, and so they take all of that into  
25 account.

7/24/2009 Townley, Jay

1       that have been in that high-end market are  
2       being eroded, are losing market share, with  
3       several key issues.

4       One being that it's now apparent  
5       from the standpoint of looking at two year's  
6       worth of data and information, that, from  
7       the standpoint of true upper-end, and this  
8       economy aside, because that is also an  
9       issue, but outside of how the economy is for  
10      the first time impinging white-collar  
11      workers and people that are in this class of  
12      consumer, is the importance of Tour  
13      sponsorship for a team -- or a bike brand to  
14      be associated with a Tour team, and tracking  
15      that back and trying to determine what the  
16      effect has been of the Tour sponsorship.  
17      The bottom line is that there's  
18      been a trend also where a bicycle brand  
19      that's in the tour is offering the same  
20      product that the professionals ride to the  
21      consumer, which has also driven up these  
22      price points and part of the dynamic of the  
23      high-end consumer with a very expensive  
24      bike, dropping it, selling it on eBay and  
25      buying another bike because that's what is

7/24/2009 Townley, Jay

1           being ridden in the Tour, and they can now  
2           get access to it, they can buy it.  
3           And that's across all of the --  
4           this year, the 19 brands sponsoring the 20  
5           teams, last year, I think, it was 17 brands  
6           sponsoring the 20 teams.

7                       MS. RAHNE: Ralph, can we take a  
8           break sometime in the next five or ten  
9           minutes?

10                      MR. WEBER: Right now is fine.

11                      VIDEOGRAPHER: We're going off the  
12           record at 10:11 a.m.

13           (Whereupon, a recess was taken.)

14                      VIDEOGRAPHER: We are back on the  
15           record at 10:25 a.m.

16                      BY MR. WEBER:

17       Q.     Let's switch gears a second. We've been  
18           talking about the United States at this  
19           point. Let's talk about a different set of  
20           countries.

21           And let's start with Austria. All  
22           right?

23       A.     Uh-huh.

24       Q.     Tell me, by order of importance, whether  
25           revenue or volume, the categories of bikes

7/24/2009 Townley, Jay

1           that are being spent on pro teams might be  
2           spent in other areas in a more effective  
3           way?

4       A.     Exactly.

5       Q.     So that the industry ought to consider, as  
6           you're spending your promotion and  
7           advertising dollars, where you're going to  
8           get the most bang for your buck?

9       A.     Where you're going to get the most bang for  
10          the bulk, we tend to look at that as a near  
11          term, but if you look at per thousand  
12          penetration of bicycles to U.S. population,  
13          we're shrinking. Not necessarily a good  
14          thing. Bang for the bulk would be the  
15          future growth of the industry.  
16          And is what you're doing -- as an  
17          example, all the top tier brands sponsor a  
18          tour team, and there's a cost associated  
19          with that. Giant is a public company that  
20          just announced in the European press that  
21          8 percent their total revenue, on an annual  
22          basis goes to pro team support.  
23          That's estimated at 22 million  
24          dollars, substantial amount of money. Not  
25          trying to tell Giant what to do, but in the

7/24/2009 Townley, Jay

1 off-road triathlon, but the team  
2 sponsorships are not necessarily the  
3 high-end road piece of the market. It's  
4 spread into off-road, BMX, there's pro  
5 riders there, Extera, which is the off-road  
6 equivalent of Triathlon, so -- Cyclocross  
7 (phonetic).

8 So it's looking at the total budget  
9 allocation, and the little bit it would  
10 take, not taking away at all from the pro  
11 team side and the importance of it or what  
12 you do to promote that, and actually take  
13 that money and spend in the general market  
14 expansion.

15 That's a lousy picture, by the way.

16 BY MR. WEBER:

17 Q. You said historically brands have spent  
18 promotion and advertising dollars in  
19 supporting pro teams, right?

20 A. Yes.

21 Q. Do you know what promotion and advertising  
22 dollars Trek has spent on pro teams in  
23 support of the LeMond brand?

24 MS. RAHNE: Object to the form.

25 Go ahead, if you know.

7/24/2009 Townley, Jay

1 arrangements I've been involved with in my  
2 life's work.

3 Q. All right. Are you aware of anything in the  
4 contract between LeMond Cycling and Trek  
5 which specified the amount of dollars Trek  
6 was obliged to spend in promotion and  
7 advertising?

8 A. My recollection is there's a percentage  
9 amount.

10 Q. Do you know whether Trek met that  
11 percentage?

12 A. Well, two respects: One, percentages for  
13 marketing expenditure, based on whatever the  
14 level of compensation, or whatever, whatever  
15 the royalty is based on, net, gross, I'm not  
16 sure, but in the first year or two, if  
17 you're going into a license agreement, that  
18 is meaningless. You got to spend the money  
19 it takes to establish the brand in the  
20 marketplace. Again, it's fundamental.  
21 Whether they spent the amount or  
22 not, I am not absolutely sure, but in  
23 recollecting the deposition particularly of  
24 the product manager and the marketing  
25 manager, it appeared to me that they were



7/24/2009 Townley, Jay

1 again, licensing, to be successful, is  
2 making sure that when you take it on you're  
3 going to do what you have to do in the  
4 marketplace.

5 Whether the 3 percent is right or  
6 not, you put a percentage in the contract  
7 and both parties are agreeing that, yeah,  
8 it's something like this.

9 But you can't apply it to the early  
10 years, because there's no revenue. So  
11 what's the obligation to establish a brand  
12 to go to market, you're going to have to  
13 spend some money to go to market.

14 If the -- particularly the company  
15 or person acquiring the license has got this  
16 obligation, I would believe, at least from  
17 my thinking, to be successful in promoting  
18 that brand. Why else do it?

19 BY MR. WEBER:

20 Q. But specifically as to my question --

21 A. On the 3 percent --

22 Q. Let me finish.

23 As to my question, and if you  
24 assume that what the contract calls for is  
25 a 3 percent spend on promotion and

7/24/2009 Townley, Jay

1 advertising, do you know one way or another,  
2 as you sit here today, whether Trek  
3 satisfied that criteria?

4 MS. RAHNE: Object to the form.  
5 Go ahead.

6 A. Based on my review of the record produced,  
7 and what I went through, my strong sense is  
8 no, but I did not see any dollar amounts.

9 BY MR. WEBER:

10 Q. Well, how could you have any sense of  
11 whether they met the 3 percent criterion if  
12 you didn't look at dollar amounts?

13 MS. RAHNE: Object to the form.  
14 Go ahead.

15 A. Whether it's 3 percent or enough or an  
16 amount of money sufficient to promote the  
17 brand, maybe it would be over-simplistic,  
18 but you take a look at what was sold in the  
19 markets, compared to the Trek brand of road,  
20 which we were specifically looking at,  
21 compared a product within the same category,  
22 and over the time frame, it looks like what  
23 it is.  
24 There was no effort that was equal  
25 to promoting Trek brand in the marketplace,

7/24/2009 Townley, Jay

1           because the numbers aren't there, and  
2           additionally, no effort that would meet,  
3           what I would think, is just the implied  
4           obligation, maybe the absolute obligation,  
5           of the letter of that contract that was  
6           signed to promote that brand, to make it  
7           successful in the marketplace. Why else  
8           license?

9                       BY MR. WEBER:

10       Q.     Are you done?

11       A.     Do you want me to be done? I'm done.

12                       MR. WEBER: Can you reread my  
13       question, please.

14                       BY MR. WEBER:

15       Q.     Please listen to my question, and answer it  
16       if you can.

17                       (Whereupon, the requested portion of  
18       the record was read back by the  
19       Reporter.)

20                       MS. RAHNE: Reinsert my objection.  
21       Go ahead.

22       A.     By looking at the sales results.

23                       BY MR. WEBER:

24       Q.     Anything else?

25       A.     And the testimony of the people immediately

7/24/2009 Townley, Jay

1 responsible for the marketing of the product  
2 within the company.

3 Q. If the contract calls for a certain  
4 percentage to be spent on promotion and  
5 advertising, that's a mathematical  
6 calculation that can be determined, true?

7 A. Yes.

8 Q. But you didn't do that?

9 A. I did not.

10 Q. Putting a sponsorship of a pro team to one  
11 side, and that topic, that subset of  
12 promotion and advertising, is there anything  
13 else that you believe Trek should have done  
14 that it did not do?

15 A. Given their culture, again, reading the  
16 record, the presentation and the marketing  
17 to the dealer organization, from the  
18 standpoint of what I read, what I understand  
19 works in that marketplace, it's my opinion  
20 that there was not enough effort put into  
21 the marketing of the product to the  
22 retailers, and the retail staff, at the same  
23 level that Trek was in turn investing and  
24 educating and working with their retailers  
25 relative to the other road brands they had.

7/24/2009 Townley, Jay

1 Q. So in addition to the pro team issue, you're  
2 saying Trek didn't spend enough to promote  
3 and advertise the LeMond brand to dealers?

4 A. Yes. To their dealers.

5 Q. And what would you cite in support of that  
6 conclusion?

7 A. Again, the record.

8 Q. What part of it?

9 A. The previous brand manager, the current  
10 marketing manager, the marketing manager at  
11 the time that the depositions were taken,  
12 and the crossover, their -- the LeMond  
13 marketing manager within the Trek  
14 organization, and the product manager  
15 responsible, and then the original manager,  
16 and I'm not sure if it was marketing or not,  
17 but the original manager responsible for the  
18 LeMond brand when they brought it on, when  
19 they did the contract, when they were moving  
20 forward.

21 Q. And what did any one of them say that Trek  
22 did not do in terms of promotion,  
23 advertising of the LeMond brand to Trek  
24 dealers?

25 A. Well, specifically the product manager was

7/24/2009 Townley, Jay

1 concerned about the degree of technology  
2 that had been developed and the points of  
3 differentiation, and getting that out into  
4 the marketplace.

5 But from a marketing standpoint,  
6 the references to both the dealer meetings  
7 to getting Greg out, getting Greg LeMond out  
8 to do more promotion, and I think generally  
9 the comments made early on, I think Ira  
10 Langer, is that the name of one of the  
11 original -- he's no longer employed by the  
12 company, but, again, my sense of reading  
13 those through was that there could have been  
14 a lot more done.

15 But looking at where Trek ended up  
16 over the time frame and where LeMond ended  
17 up, I mean, it's -- to me it's hard to get  
18 the kind of numbers that are posted there  
19 for LeMond without almost abject neglect  
20 from the standpoint of building the brand,  
21 at least to the level of the other brands  
22 that you're responsible for.

23 Q. And I want to be quite specific, and I  
24 understand your testimony about pro teams,  
25 and now a second item you've identified is

7/24/2009 Townley, Jay

1           you think Trek should have gotten Greg out  
2           more.

3       A.     Essentially. One of the aspects of that,  
4           yes.

5       Q.     What else, in addition to pro team  
6           sponsorship and getting Greg out more, do  
7           you think Trek should have done under the  
8           contract with LeMond Cycling that it did not  
9           do?

10      A.     Those would be on my top two. Whether that  
11           collateral material and working the vertical  
12           press would have helped that, I think it  
13           would have naturally followed.

14           In other words, the pro team  
15           generates PR, visibility, buzz in the  
16           vertical silos of marketing in the dealer  
17           channel, and proactively being out in the  
18           field with dealers and talking to dealers  
19           about the brand, as opposed to once a year  
20           coming in -- or coming into meetings, is  
21           getting the dealer and their staff a closer  
22           relationship to the product.

23           If they -- they get called on. I  
24           mean, this is fairly common in the dealer  
25           trade, something I learned early on, that if

7/24/2009 Townley, Jay

1 the company representative comes in and  
2 talks to the dealer, shakes of the hands of  
3 the mechanics, maybe takes them out for a  
4 lunch, chats them up a little bit, it's good  
5 for morale, as opposed to not doing that  
6 relative to the brand.

7 Q. Okay. And, again, you've gone back to  
8 getting Greg out more --

9 A. As part of that.

10 Q. So that's two. Is there a third?

11 A. And what would be related to that as a third  
12 would be what they would put into the  
13 vertical publications.

14 Q. What is a vertical publication in this  
15 context?

16 A. It is an enthusiasts cyclists publication.  
17 Best example I can give you Velonews.  
18 V E L O N E W S, all one word.

19 Q. So these are three examples of promotion and  
20 marketing efforts that you believe Trek  
21 should have done at a greater level than it  
22 did, right?

23 A. Yes.

24 Q. Is there a fourth?

25 A. No.



7/24/2009 Townley, Jay

1 Q. Is there anything else, in addition to  
2 promotion, advertising of the LeMond brand,  
3 that you're here to testify about, in terms  
4 of what Trek did or didn't do?

5 A. Did or didn't do relative to?

6 Q. The LeMond brand.

7 A. I think overall those are the keys, but it's  
8 also the issues of representation, good  
9 will, making sure the sales force is out  
10 there talking up the product. I mean,  
11 that's part of the salesmanship side, it's  
12 not promotion, and it's not the dealer  
13 calls.  
14 This is the standard group of  
15 people on the phones, driving the cars,  
16 coming in taking in the orders.

17 Q. Anything else?

18 A. No.

19 Q. So the -- if I understand you correctly, in  
20 addition to the pro team, getting Greg out  
21 more, collateral material for enthusiasts  
22 publication like Velonews, a fourth item  
23 you're saying Trek should have done more was  
24 making sure the sales staff is talking up  
25 the product? Am I understanding you

7/24/2009 Townley, Jay

1 correctly?

2 A. Positively talking up the product and out  
3 explaining the features of the  
4 differentiation.

5 Q. And what is the source of your knowledge, if  
6 any, about Trek's efforts to have its sales  
7 staff out talking up the product and  
8 explaining the features of the  
9 differentiation?

10 A. From what I read in the record.

11 Q. And what in particular?

12 A. The testimony of, again, the marketing  
13 manager, coupled with the folks that did the  
14 earlier marketing and sales.

15 Q. And what specifically did any of those  
16 people say with respect to making sure the  
17 sales staff was out talking up the product  
18 and out explaining the features of the  
19 differentiation?

20 A. I don't recall anything specific that I can  
21 quote to you. It's the general sense, I got  
22 from reading those documents through  
23 numerous times to try to get a feel for what  
24 they were saying relative to the support  
25 that was given to the brand.

7/24/2009 Townley, Jay

1 Q. And what did any of them say in particular  
2 from which you're drawing these sensory  
3 inferences?

4 A. I'm trying to recall specifically. Sitting  
5 here right now, at this moment, I can't  
6 quote it.

7 Q. Well, do you think it's enough for an expert  
8 just to come in and say, Well, I read a lot  
9 of materials, and this is kind of my gut  
10 feel?

11 MS. RAHNE: Object to the form.

12 A. I think it also goes to the numbers. I  
13 mean, if you're looking at the sales effort,  
14 why would they accept the sales that they  
15 got?  
16 It's the numbers in comparison to  
17 the effort that went in to -- the brand  
18 management piece on the race side, you've  
19 got one brand that's showing a fairly  
20 aggressive curve in the marketplace, and the  
21 other one is flat.

22 And, again, from experience in the  
23 same issues in several companies with the  
24 same kinds of products associated with the  
25 same market, the only way that occurs is if

7/24/2009 Townley, Jay

1           there's not support, because if you're  
2           putting support into it, you get something.  
3           And these are just -- these numbers  
4           are very small, I mean, if Trek, from the  
5           standpoint of what it promotes, and LeMond,  
6           from the standpoint of where LeMond ends up.  
7           So the answer to your question,  
8           from my standpoint, is evaluating the stats.

9                       BY MR. WEBER:

10          Q.       You're talking about sales stats?

11          A.       Yeah. Yes.

12          Q.       And I'm talking about the evidence that you  
13                   have reviewed that enables you to, you  
14                   believe, to draw expert opinions in this  
15                   case.

16                   And my question, with respect to  
17                   this fourth item you've identified, making  
18                   sure the sales staff is talking up the  
19                   product and out explaining the features of  
20                   the differentiation, I'm asking you to refer  
21                   me to a single piece of evidence that would  
22                   support a conclusion in this regard, other  
23                   than the ultimate sales numbers.

24                   MS. RAHNE: Object to the form.

25                   Go ahead.

7/24/2009 Townley, Jay

1       A.     And other than the ultimate sales numbers,  
2             and my sense of the record, sitting here  
3             right now I can't give you a specific  
4             instance.  
5             I could put it in the context of  
6             what would I do, and what have I seen done,  
7             but those seem to me to be the basics, that  
8             you build the ability to take a brand to  
9             market and do it successfully, and if the  
10            numbers don't yield that, which they don't,  
11            if you had the experience in looking at how  
12            you build the brand, you look at the pieces  
13            that make that successful. It's not rocket  
14            science. It's fairly straightforward.

15                   BY MR. WEBER:

16       Q.     Fairly straightforward to sell a bike brand?

17       A.     Well, 147 of them are sold in the  
18             marketplace, and a good number of those  
19             stick around, and there's a formula to that.

20       Q.     Was Schwinn successful --

21       A.     In many ways.

22       Q.     -- or did Schwinn go bankrupt?

23       A.     Schwinn went bankrupt.

24       Q.     Did Cannondale go bankrupt?

25       A.     Yes.

7/24/2009 Townley, Jay

1 ground. The easiest market to sell in this  
2 business is upper-end, enthusiasts, because  
3 that's what the shops are populated with,  
4 that's what the business is all about,  
5 that's where the product managers are -- the  
6 bike shops in this country are populated  
7 with enthusiasts, simple terms, so are most  
8 of the product development departments, and  
9 consequently that's a great mindset to be  
10 in.

11 I mean, they had all the elements  
12 for that brand to be successful. The  
13 Coasting and the problem of dealer feedback  
14 and dealers not representing products or not  
15 selling products to the consuming public, or  
16 condescending to women, not doing the things  
17 that expand the market, are part and parcel  
18 of the statement I made.

19 But, in turn, from the standpoint  
20 of selling LeMond bikes, they had all the  
21 tools they needed, they just didn't employ  
22 them.

23 Q. Because they had the incorrect, in your  
24 view, dealer-focused marketing strategy?

25 A. Overly influenced by dealer feedback, as

7/24/2009 Townley, Jay

1           opposed to going out and finding out what  
2           consumers want, need and opinion was.

3       Q.     The next paragraph, "The alleged problems  
4           relative to both the Trek and LeMond brands  
5           are much more an emotional reaction within  
6           the Trek-dealer focused culture than real  
7           substantive problems in the bike shop  
8           channel of trade or the adult enthusiast  
9           cyclists market."

10          What do you mean?

11                       MS. RAHNE: Slowly.

12       A.     The core of the statement leading on from  
13           the first paragraph, the issues that were  
14           raised relative to LeMond, and selling  
15           LeMond product, are based on this emotional  
16           reaction to what was said, whatever that  
17           was.  
18           When you get to the heart of  
19           selling bicycles, marketing bicycles,  
20           moving -- even in the dealer trade, that  
21           marketplace, that channel, this is such a  
22           small subset that's based on -- rumors mean  
23           a lot, you know, there's the trash talk that  
24           goes on, but more than anything else it's  
25           the emotion.